UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/053,843	01/22/2002	Craig William Fellenstein	RSW920010227US1	5014

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EXAMINER
NELSON, FREDA ANN

ART UNIT	PAPER NUMBER
3639	

DATE MAILED: 09/30/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO 90C (Rev 10/03)

	Application No.	Applicant(s)
	10/053,843	FELLENSTEIN ET AL.
Office Action Summary	Examiner	Art Unit
	Freda A. Nelson	3639

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _3_ MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on _22 January 2002_.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) _1-12_ is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) _1-12_ is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
    Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____.

5)☐ Notice of Informal Patent Application (PTO-152)

6)☐ Other: _____.

DETAILED ACTION

This is in response to a letter for a patent filed October 22, 2002 in which claims 1–12

were presented for examination. Claims 1-12 are pending.

Information Disclosure Statement

The information disclosure statement (IDS) submitted on 01/22/2002 is in compliance

with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is

being considered by the examiner. A copy of PTO-1449 is attached hereto.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of
matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the
conditions and requirements of this title.

1.   Claims 1-12 are rejected under 35 U.S.C. 101 because the claimed invention is

directed to non-statutory subject matter.

The basis of this rejection is set forth in a two-prong test of:

(1) whether the invention is within the technological arts; an,

(2) whether the invention produces a useful, concrete, and tangible result.

For a claimed invention to be statutory, the claimed invention must-be within the

technological arts. Mere ideas in the abstract (i.e., abstract idea, law of nature, natural

phenomena) that do not apply, involve, use, or advance the technological arts fail to

promote the "progress of science and the useful arts" (i.e., the physical sciences as

opposed to social sciences, for example) and therefore are found to be non-statutory
subject matter. For a process claim to pass muster, the recited process must somehow
apply, involve, use, or advance the technological arts.

In the present case, claims 1-12 only recite an abstract idea. The recited steps
of determining a level of environmental complexity, a level of change, and a type of
environment...dividing a baseline price for the data processing services by the total
number of points to provide a per-point price does not apply, involve, use, or advance
the technological arts (i.e. interaction in the steps with the computer/computer network
or other equivalent means) since all of the recited steps can be performed in the mind of
the user or by use of a pencil and paper. These steps only constitute an abstract idea.

Without a claimed basis, the claim may be interpreted in an alternative as
involving no more than a manipulation of an abstract idea and therefore non-statutory
under 35 U.S.C. 101. In contrast, a method claim that includes in the preamble "A
computer implemented method for --", or something similar and includes in the body of
the claim at least one structural / functional interrelationship which can only be computer
implemented is considered to have a technological basis [See Ex parte Bowman, 61
USPQ2d 1669, 1671 (Bd. Pat. App. & Inter. 2001).

Although the recited process produces a useful, concrete, and tangible result,
since the claimed invention, as a whole, is not within the technological arts as explained
above, claims 1-12 are deemed to be directed to non-statutory subject matter.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2.   Claims 1-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Yamazaki (US PG Pub. 2002/0040334) in view of Miller (Patent Number 6,338,043).

        In claims 1 and 8, Yamazaki discloses that support includes diversified contents, such as software inquiry service, software install service, hardware on-site repair service, hardware maintenance and routine service, and hardware failure monitor service, and each computer vendor presents their unique support contents menus (paragraph 0002). Yamazaki discloses that the points are the base on which the grade is set, and determined in accordance with a response to the content of the inquiry and if the response involves an activity of higher technique, higher points are set; and the user is graded based on a total of the points, namely, accumulated points (paragraph 0039). Yamazaki further discloses that in terms of technical levels, the usage pattern varies from a fundamental inquiry from a user's lack of understanding of technology to a critical and highly difficult problem related to the basic operation of a computer system (paragraph 0006). Yamazaki discloses that the point conversion table 22 of the evaluating section 15 stores a fee per point for each grade (paragraph 0033); and an amount per point is stored for each grade and instead of setting an amount per point, amounts for corresponding points may be set directly in each grade (paragraph 0061, FIGS. 8 and 10).
        Yamazaki does not disclose dividing a base line price for the data processing services by the total number of points to provide a per-point price. Miller discloses that media buyers often measure the cost effectiveness of buying a particular spot based on its cost-per-point (CPP) value wherein the CPP value of a spot associated with a given program is calculated by dividing the purchase price of the spot by the rating of that program; thus, if a given program has a Nielsen Media Research rating (point) of "4", and the station charges $300 for a thirty second announcement (service) in the program, then the CPP for that spot is $75 CPP (i.e., $300/4) (col. 1, lines 49-64). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Yamazaki to include the feature of Miller in order provide the user with a per-point price.

In claim 2, Yamazaki discloses that the point conversion table 22 of the evaluating section 15 stores a fee per point for each grade and here, the higher is the grade, the lower is the charged fee; and the grade conversion table 23 of the evaluating section 15 stores the service costs and corresponding grades and here, the higher the cost, the lower the grade becomes (paragraph 0033). Yamazaki further discloses that the points are the base on which the grade is set, and determined in accordance with a response to the content of the inquiry (paragraph 0039; FIGS. 1 and 3).

In claim 3, Yamazaki discloses that in terms of technical levels, the usage pattern varies from a fundamental inquiry from a user's lack of understanding of technology to a critical and highly difficult problem related to the basic operation of a computer system (paragraph 0006).
Yamazaki does not disclose that the predetermined levels of environmental complexity include simple, medium, and complex. However, it is old and well known in the computer art that levels of complexity in support services (data processing) include simple (easy), medium, and complex. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Yamazaki to include simple, medium, and complex technical levels in order to set a support fee based on the three levels in order to optimize profits.

In claims 4-5, Yamazaki discloses that the user information registering unit 16 sets an initial grade in Step S104 and by giving consideration to a possible shifting (upgrade/downgrade) of the grade, a middle grade is set as the initial grade wherein ten grades are set in total in the present embodiment, and the initial grade is set at the fifth grade in the middle (paragraph 0044).
Yamazaki does not disclose that the predetermined levels of change include low, medium, and high. However, it is old and well known in the computer art that levels of possible change in support services (data processing) include low, medium, and high, as well as, unlikely, and likely, and highly likely to change. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Yamazaki to include a low, medium, and high level of change in order to set a support fee based on the three levels of possible shifting of support.

In claims 6-7, Yamazaki discloses a technology for giving a support to computer users such as on how to use computer hardware, software, and system resources (paragraph 0001). Yamazaki further discloses that conventionally, computer vendors have been providing extra-cost service for their computer users, especially, user companies; and the support includes diversified contents, such as software inquiry service, software install service, hardware on-site repair service, hardware maintenance and routine service, and hardware failure monitor service, and each computer vendor presents their unique support contents menus (paragraph 0002).
Yamazaki does not disclose that the predetermined types of environments include, support, development, and production. However, it is old and well known in the computer art that there are various types of environments of data processing services,

including support, development, and production. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Yamazaki to include different types of environments needing data processing services including, development and production in order to provide services for a variety of environments.

In claims 9 and 11, Yamazaki discloses that in terms of technical levels, the usage pattern varies from a fundamental inquiry from a user's lack of understanding of technology to a critical and highly difficult problem related to the basic operation of a computer system (paragraph 0006). Yamazaki further discloses that the user information registering unit 16 sets an initial grade in Step S104 and by giving consideration to a possible shifting (upgrade/downgrade) of the grade, a middle grade is set as the initial grade wherein ten grades are set in total in the present embodiment, and the initial grade is set at the fifth grade in the middle (paragraph 0044). Yamazaki still further discloses a technology for giving a support to computer users such as on how to use computer hardware, software, and system resources (paragraph 0001).

Yamazaki does not disclose that the predetermined levels of environmental complexity include simple, medium, and complex. Yamazaki does not further disclose that the predetermined levels of change include low, medium, and high. Yamazaki does not still further disclose that the predetermined types of environments include, support, development, and production. However, it is old and well known in the computer art that levels of complexity in support services (data processing) include simple (easy), medium, and complex; it is old and well known in the computer art that levels of possible change in support services (data processing) include low, medium, and high, as well as, unlikely, and likely, and highly likely to change; and it is old and well known in the business/computer art that there are various types of environments (industries) in need of data processing services, including support, development, and production environments. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Yamazaki to include simple, medium, and complex technical levels in order to set a support fee based on the three levels in order to optimize profits; to include a low, medium, and high level of change in order to set a support fee based on the three levels of possible shifting of support; and Yamakazi to include different types of environments needing data processing services including, development and production in order to provide services for a variety of environments.

In claims 10 and 12, Yamazaki discloses that the points are the base on which the grade is set, and determined in accordance with a response to the content of the inquiry and if the response involves an activity of higher technique, higher points are set; and the user is graded based on a total of the points, namely, accumulated points (paragraph 0039; FIGS. 9 and 10). Yamazaki further discloses that in terms of technical levels, the usage pattern varies from a fundamental inquiry from a user's lack of understanding of technology to a critical and highly difficult problem related to the basic operation of a computer system (paragraph 0006). Yamazaki still further discloses that

the point conversion table 22 of the evaluating section 15 stores a fee per point for each grade (paragraph 0033); and an amount per point is stored for each grade and instead of setting an amount per point, amounts for corresponding points may be set directly in each grade (paragraph 0061, FIGS. 8 and 10). Yamazaki still further discloses that the user information registering unit 16 sets an initial grade in Step S104 and by giving consideration to a possible shifting (upgrade/downgrade) of the grade, a middle grade is set as the initial grade wherein ten grades are set in total in the present embodiment, and the initial grade is set at the fifth grade in the middle (paragraph 0044).

Yamazaki is silent about multiplying together the count of points for the unit to be added and the per-point price; however, it is inherent that the step has been performed in order to for the system to provide an updated and/or total amount.

Conclusion

3.   The examiner has cited prior ad of interest, for example:

1) Iulianello et al. (Patent Number 6,938,007), which disclose a method of pricing

application software.

2) Matsumoto et al. (US PG Pub. 2002/0120508), which disclose a point
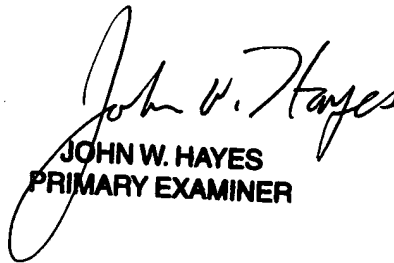
managing method.

3) Stubiger et al. (US Pg Pub. 2002/0161600), which disclose a technical support

program.

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Freda A. Nelson whose telephone number is (571) 272-

7076. The examiner can normally be reached on Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, John Hayes can be reached on 571-272-6708. The fax phone number for

the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the

Patent Application Information Retrieval (PAIR) system. Status information for

published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see http://pair-direct.uspto.gov. Should

you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free).

FAN 09/23/05

JOHN W. HAYES
PRIMARY EXAMINER